

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Donald R. Surdak, Jr.,)
Plaintiff,) Civil Action No. 0:09-3287-TMC
v.)
Director Jon Ozmint, SC Dep't of Corr.;)
Richard Bazzle, Warden; Lt. Susan Duffy,)
Dorm LT; Sgt. Cotter, Dorm Sgt.; Ofc. John)
Doe, Dorm Ofcs.; Jane Doe, Dorm Ofcs.;)
Ofc.NFN Barnes,)
Defendants.)

)

OPINION and ORDER

Donald R. Surdak, Jr. (“Plaintiff”), a state prisoner *pro se*, filed this civil action against the Defendants pursuant to 42 U.S.C. § 1983 alleging a violation of his constitutional rights by the named Defendants. This matter is before the court on the Magistrate Judge’s Report and Recommendation (Dkt. # 132) filed January 12, 2012, recommending that the court grant Defendants’ Motion for Summary Judgment (Dkt. # 78) and that the Plaintiff’s Motion for Extension of Time and Motion for Temporary Restraining Order (Dkt. # 115) be terminated as moot. The Report and Recommendation further recommended that Defendants, Ofcs. John Doe and Ofcs. Jane Doe, be dismissed from this action without prejudice as said Defendants were never identified or served with process. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s Report herein without a recitation.

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) for the District of South Carolina. The

Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report and Recommendation (Dkt. # 132 at 10). However, Plaintiff filed no objections to the Report and Recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation (Dkt. # 132) and incorporates it herein. It is therefore **ORDERED** that the Defendants' Motion for Summary

Judgment (Dkt. # 78) is **GRANTED**; that the Plaintiff's Motion for Extension of Time and Motion for Temporary Restraining Order (Dkt. # 115) is **DENIED** as moot; and that Defendants, Ofcs. John Doe and Ofcs. Jane Doe, are **DISMISSED** without prejudice due to lack of identification or service of process.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Greenville, South Carolina
February 3, 2012

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.